

James Alan Bush  
1745 De Marietta Avenue #3  
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(408) 982-3272

Plaintiff in pro per

**FILED**

2008 MAY 16 P 3:30

RICHARD W. WIEKING  
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U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

James Alan Bush,	)	Case No.: C 08-01354 (RS) JF
	)	
Petitioner,	)	PETITION FOR DECLARATORY AND
	)	INJUNCTIVE RELIEF FOR FAILURE TO
v.	)	MAINTAIN RECORDS PROPERLY
	)	
Crime Scene Investigator James	)	[Title 42 U.S.C.S. § 1983 and
Anton, Officer Benjamin Holt,	)	Civ. Code § 1798.45(b), (c)]
Lieutenant Carl Rushmeyer,	)	
Lieutenant Vierra, Officer Jon	)	
Marines, Officer Christopher	)	Judge Jeremy Fogel
Fontaine, Officer Michael (aka	)	
"Mick") Rose, Officer Devon	)	
Klein, and Sunnvyale Department	)	
of Public Safety,	)	
	)	
- and -	)	
	)	
Long (aka "Kevin") Cao, Daniel	)	
Napolitan, Daniel Cortez,	)	
Laurene Weber, Robert Bradford	)	
(aka "Malnburg, Jr."), Jonathan	)	
Harrington, Josh Williams,	)	
	)	
Respondents.	)	
	)	

**PRELIMINARY STATEMENT**

Pursuant to Civ. Code §§ 1798.18, 1798.45(b), (c), 1798.48, Petitioner, James Alan Bush, seeks declaratory and injunctive relief against Respondents, Sunnyvale Department of Public Safety and Crime Scene Investigator James Anton, for failure to properly maintain records containing information concerning the petitioner. Petitioner alleges and can prove that the improper maintenance resulted in unfair and prejudicial bias in an official determination and unduly influenced the exercise of discretion by other law enforcement officers based on the falsehoods and misrepresentations contained in these records.

**JURISDICTION AND VENUE**

Actions against a state agency pursuant to Civ. Code §§ 1798.18, 1798.45(b), (c), 1798.48 for failure to properly maintain records may be brought in any court of competent jurisdiction in the county in which the petitioner resides, or in which the respondent agency's records are situated [Civ. Code § 1798.49].

**PARTIES**

1. Petitioner is an individual, as defined in Civ. Code § 1798.3(d), and is lawfully entitled to bring this cause of action pursuant to Civ. Code § 1798.45(b), (c). Petitioner was, at all times mentioned herein, a resident of the City of Sunnyvale, County of Santa Clara, State of California, residing at 1220 Tasman Drive SPC 379.
2. Respondent, Sunnyvale Department of Public Safety ("SDPS"), is a law enforcement agency, charged with the enforcement of law and

1 order in the City of Sunnyvale, County of Santa Clara, State of  
2 California.

3 3. Respondent, James Anton (Badge No. 12008), was, at all times  
4 mentioned herein, a Crime Scene Investigator, employed by the  
5 Sunnyvale Department of Public Safety, acting under color of law  
6 and in his official and individual capacity.

7 4. Respondent OFFICERS, who are officers of the Sunnyvale Department of  
8 Public Safety, acting under color of law and in their official and  
9 individual capacities.

10 5. Respondents, Long (aka "Kevin") Cao, Daniel Napolitan, Daniel  
11 Cortez, Laurene Weber, Robert Bradford (aka "Malnburg, Jr."),  
12 Jonathan Harrington, and Josh Williams, are defendants for the  
13 purposes of Title 42 U.S.C.S. § 1983, and are being sued as private  
14 individuals and as state actors, and are liable for civil rights  
15 violations against Plaintiff under color of law. [Cruz v. Donnelly,  
16 727 F.2d 79, 82 (3d Cir. 1984) Id., 727 F.2d 79, 80; Adickes v. S.  
17 H. Kress & Co., 398 U.S. 144, 152, 90 S. Ct. 1598, 26 L. Ed. 2d 142  
18 (1970); Coggins v. Carpenter, 468 F. Supp. 270, 282, (E.D. Pa. 1979);  
19 U.S. v. Price, 383 U.S. 787, 794, 86 S. Ct. 1152, 16 L. Ed. 2d 267  
20 (1966); Fine v. City of New York, 529 F.2d 70, 75 (2d Cir. 1975). U.S.  
21 v. Classic, 313 U.S. 299, 326, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941);  
22 Jones v. Eagleville Hosp. and Rehabilitation Center, 588 F. Supp. 53,  
23 56 (E.D. Pa. 1984)]

**FACTUAL ALLEGATIONS**

6. Respondent SDPS maintains Report No. 06-5149, which contains falsehoods and mischaracterizations of true facts, within the meaning of Civ. Code §§ 1798.18, 1798.45(b). A copy of this report and the supplemental report are attached hereto as Exhibits "A" and "B", and are made a part hereof.
7. These records falsely state that the petitioner was arrested multiple times, and that mental illness and use of controlled substances caused him to make false claims to police and to willfully associate with persons who victimize him; specifically, Respondent Anton wrote:

On 05-18-06 at approximately 0350 hrs, PSO Holt and I responded to 1220 Tasman #379 in an attempt to conduct follow-up investigation on a case that had occurred earlier in the evening (refer to PSO Holt's narrative for details). We responded to the mobile home to establish if the subject of an earlier arrest was in fact associated with the residence as she had claimed.

I had knowledge that James Bush has been arrested several times for being under the influence of a controlled substance after calling the Police to report intruders and other activity that had been the result of paranoia.

I had personally responded to the residence on several previous occasions for controlled substance-related events. One of those events included a controlled substance manufacturing case where a handgun was also

1 recovered (03-31-06, CR06-3298).

2 [omitted]

3 On another event, I had contacted a Daniel Na[p]olitan  
4 outside the residence. Prior to our contact at the  
5 residence, dispatch advised that Na[p]olitan had two  
6 outstanding misdemeanor warrants for his arrest.

7 After arriving at the mobile home ... PSO Holt knocked  
8 and we received no response, PSO Holt and I began to  
9 walk away from the residence. As I began leaving the  
10 driveway area, a vehicle drove up and stopped directly  
11 in front of the home. I immediately recognized the  
12 passenger as James Bush, the owner of the home. Bush and  
13 I had discussed on prior occasions that he had a habit  
14 of inviting people he didn't know very well to live with  
15 him. This often put Bush in a position to call the Police  
16 when those associates overstayed their welcome, stole  
17 from him, or otherwise made him uncomfortable. Bush  
18 had always admitted to me that he needed to stop doing  
19 this. When I saw Bush, I casually asked him, "Hi[,] Mr.  
20 Bush, what are you up to?" Bush immediately stated that  
21 he had just kicked "Danny" and "some crazy chick named  
22 [Laurene]" out of his house that evening. After asking  
23 Bush if anyone was inside the residence, he stated that  
24 he did not know. He then stated that he wanted "Danny"  
25 out of his house (if he was in there). When I asked if  
26 Danny had been "using" methamphetamine), Bush nodded

1 yes. Bush then told me that a "Robert" was also in the  
2 home. When I asked if "Robert" was allowed to stay in  
3 the residence, Bush told me that "Robert has issues,"  
4 but that he did not have to leave immediately. Bush then  
5 provided me with his house keys and requested that I  
6 check his house to ensure "Danny" was no longer there.

7 8. This purported information concerning the petitioner contained  
8 in respondent agency's report is inaccurate, incomplete,  
9 and/or irrelevant, and they slander the petitioner and attribute  
10 undesirable characteristics to him without justification; moreover,  
11 it contains statements that are clearly intended to obfuscate  
12 the defendant's culpability and/or negligence in the events and  
13 circumstances that are recorded in it.

14 9. Petitioner contradicts the respondent's statements with these facts:

- 15 • Petitioner was not arrested several times for any crime  
16 preceding the occurrence of the events that are recorded in  
17 defendant agency's records;
- 18 • Petitioner never made false claims to the police, particularly  
19 with respect to the events and circumstances described in  
20 Report No. CR06-3298;
- 21 • Petitioner was not arrested in the course of events described  
22 in Report No. CR06-3298; he was the reporting party and victim.
- 23 • The incident described in Report No. CR06-3298 occurred on  
24 March 29<sup>th</sup>, 2006 (not March 31<sup>st</sup>, 2006). Petitioner filed a  
25 declaration in support of this petition, and a partial copy of  
26 the aforementioned report is attached hereto as Exhibit "B" and

1 made a part hereof.

- 2 • Laurene Weber was not "associated" with Petitioner's residence;  
3 and, the premise given the petitioner for the Respondent  
4 Anton's presence on the petitioner's property was based on  
5 outstanding warrants for Respondent Napolitan, who was not a  
6 resident nor was he lawfully permitted to occupy Petitioner's  
7 residence, per Respondent Ferguson. Also, Petitioner asked  
8 Respondent DOE OFFICER ONE to remove Respondents Napolitan and  
9 Bradford two weeks prior to May 18<sup>th</sup>, 2006;
- 10 • When Petitioner and Respondent Cao drove past the petitioner's  
11 residence, Respondent Anton and other officers rushed Respondent  
12 Cao's vehicle, and tersely ordered Respondent Cao to stop; then,  
13 Respondent OFFICERS ordered the petitioner to exit the vehicle;
- 14 • Respondents Anton and Holt were not exiting Petitioner's  
15 driveway upon his arrival; rather, both respondents and several  
16 other Respondent OFFICERS were present, and were actively  
17 searching for persons inside Petitioner's residence by shining  
18 flashlights in the front, side and rear windows;
- 19 • Upon informing Respondent Anton and other officers at the  
20 scene that Respondent Napolitan was not in Petitioner's home,  
21 Petitioner agreed to Respondent OFFICERS' request for his house  
22 keys, which they then used to enter his home. Petitioner's house  
23 keys, which also included his only set of car keys, were never  
24 returned;
- 25 • Petitioner and Respondent Anton never had discussions in which  
26 the petitioner admitted to habitual (and negligent) choices

1 of roommates; moreover, maintenance of information on First  
2 Amendment activities is prohibited in state agency records;  
3 and,

- 4 • Petitioner did not accuse Respondent Napolitan of using  
5 methamphetamines.

6 10. Respondents failed to properly maintain its records in that it  
7 seeks to cover up the predicate acts of its officers on March 29<sup>th</sup>,  
8 2006, and May 18<sup>th</sup>, 2006, by falsifying the petitioner's arrest  
9 record, and by grossly misrepresenting his relationship with the  
10 other parties mentioned in the report. Insodoing, the respondents  
11 portray the petitioner as someone who habitually and negligently  
12 contributes to his own victimization by willfully associating with  
13 persons who commit controlled substance-related crimes involving  
14 illegal firearms; and, by inference and implication, the respondent  
15 accuses the petitioner of committing crimes induced by the use of  
16 controlled substances and of making false statements to police as a  
17 consequence of insanity.

18 11. At the times mentioned herein, Petitioner was unaware of the  
19 inaccuracy, incompleteness, and irrelevance of the information  
20 maintained by Respondent SDPS. [Civ. Code §§ 1798.35, 1798.36] He  
21 was not made aware until October, 2006, through records procured  
22 by his attorney. Upon discovery, Petitioner requested to amend the  
23 information; however, his request was denied by the respondent, who  
24 also refused to include a statement of disagreement in the records.  
25 [Civ. Code §§ 1798.35, 1798.36]

26 12. Respondent's failure to properly maintain records precluded



Petitioner from qualifying for compensation from the Crime Victim's Restitution Fund.

13. This adverse determination was made on the basis of the above-described information concerning Petitioner contained in Respondent SDPS's records. The manner in which Respondent maintained the respondent agency's records containing information concerning Petitioner denied him fairness in the determination in that he was regarded as a negligent contributor to the criminal conduct by which he was actually victimized. [Civ. Code § 1798.18] The adverse result of the determination was a proximate result of failure of the defendant to properly maintain its records [Civ. Code §§ 1798.18, 1798.45(b)].

14. As a proximate result of the conduct of the respondents as herein alleged, and as alleged in the complaint upon which this motion is based, petitioner has suffered damages in the amount equal to that which he would have been awarded by the Crime Victim's Compensation Fund in lost wages [Gov. Code § 13957.5(a)(1)].

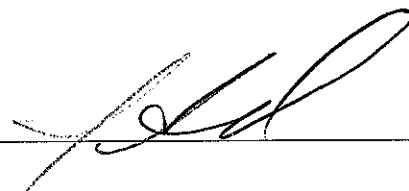
#### PRAYER FOR RELIEF

WHEREFORE, Petitioner prays judgment against Respondents:

1. A declaration of fact to resolve the dispute between parties in regards to the statements in controversy; and, a declaration of liability for the loss of Plaintiff's house and car keys, and the stolen property taken from his home on May 18<sup>th</sup>, 2006;
2. For injunctive relief, ordering the respondents to amend the record according to declaration of fact by this Court

[Civ. Code §§ 1798.35, 1798.36];

3. For a waiver of exhaustion of administrative remedies, which requires Petitioner to mail a claim to the auditor of the Sunnyvale Department of Public Safety for the injuries, disabilities, and damages that he suffered [Gov. Code §§ 905, 905.2, 912.4];
4. For reasonable attorney's fees, as determined by the court [Civ. Code § 1798.48];
5. For costs of suit herein incurred;
6. For such other and further relief as the court may deem proper; and,
7. A declaration that any award for damages in this cause of action does not preclude further damage awards to Plaintiff in matters in regards to the related complaint.

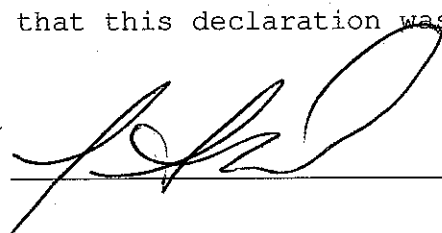
Signed: 

Dated: 5-16-08

**VERIFICATION**

I, James Alan Bush, Petitioner in the above-entitled action, have read the foregoing and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein alleged on information and belief; and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in San Jose, California.

Petitioner: 

Dated: 5-16-08

CERTIFICATE OF SERVICE

A copy of the above petition was mailed by certified mail, return receipt requested, to the Sunnyvale Department of Public Safety, Crime Scene Investigator James Anton, and the District Attorney for the City of Sunnyvale, on May 16<sup>th</sup>, 2008.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

5-16-08